# IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**CWP NO. 209 OF 2002**

**Date of Decision: 21ST March, 2007**

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|---|---|
| Bishan Singh | Petitioner |
| Versus | |
| Union of India and another | Respondents |

Coram

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting[1]? Yes

For the petitioner: Mrs. Ranjana Parmar, Advocate.

For the respondent: Mr.Ravinder Thakur, Central Govt. Counsel.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

By way of this writ petition, the petitioner is seeking quashing of the order dated 24.9.2001 passed by Commandant, Group Centre, SSB, Dharampur. Petitioner has further prayed that the disciplinary enquiry initiated against him vide order dated 4.11.1999 and proceedings in connection thereto be quashed and set aside and the enquiry report given by the Enquiry Officer be held illegal and that he be

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

reinstated with all consequential benefits. Undisputed facts leading to the filing of the present writ petition are as under:-

Petitioner was enrolled as Constable No.8564509, in Group Centre, SSB, Dharampur, District Solan, H.P. and was lastly posted as Constable in Tapri Circle, District Kinnaur, H.P. On 24.4.1994, petitioner is alleged to have deserted his place of duty without permission of the competent authority to follow Shri Lachhi Ram and Shri Kedar Ram, who with mala fide intention had taken three tourists, namely, Shri Surinder Kumar, Shri Dalip Kumar and Smt.Sarita Devi, travelling from Uttar Kashi to Sangla, District Kinnaur. Petitioner alongwith Thakur Bhagat, Constable of Police Post, Tapri, met the aforesaid persons at a distance of about 2 to 2.5 Kms. from Tapri at about 1745/1800 hours. Petitioner alongwith Constable Thakur Bhagat asked the aforesaid three tourists for production of their Inner line permits, which was neither warranted nor fell within the sphere of his duty. Petitioner further forced these tourists to turn back to Tapri and on resistance, he alongwith Thakur Bhagat misbehaved with the tourists and also molested Smt. Sarita Devi. This amounted to misconduct, neglect of duty remissness in the discharge of his duties in his capacity as a member of the force under Section 11(1) of the CRPF Act,

1949, which is unbecoming of an SSB official bringing bad name/ disrepute to the Organization.

Departmental proceedings were initiated and petitioner was charge-sheeted on the following Articles of Charges:-

"Article-I:

That the said Constable Bishan Singh No. 8564509 of "F' Coy. Of Group Centre (SSB), Dharampur, while functioning as such and performing the duties of I/Man in Tapri Circle on 24.4.94 at about 1745 hrs. committed misconduct/neglect of duty and remissness in the discharge of his duty in his capacity as a member of the force U/S 11(1) of CRPF Act, 1949, in that he absented/deserted his place of duty without prior permission/ information of the competent authority and indulging in illegal activities.

Article-II:

That the above Constable Bishan Singh No. 8564509 of "F' Coy of Group Centre (SSB), Dharampur, while functioning as such and performing the duties of I/Man in Tapri Circle on 24.4.94 at about 1745 hrs. committed misconduct/neglect of duty, remissness in the discharge of duties in his capacity as a member of the force U/S 11(1) of CRPF Act, 1949 in that associated with Sh.Thakur Bhagat, Const. of Police check post Tapri towards Wangtu road. Thereby misusing his official authority to ask three tourists namely Surinder Kumar, his wife Smt. Sarita Devi and Dalip Kumar (nephew) all from Uttar Kashi District (U.P) who were on way to Sangla, District Kinnaur, H.P. for Inner line

permit and abetting the same with another Govt. official.

Article-III:

That the above Constable Bishan Singh No. 8564509 of "F' Coy. Of Group Centre, SSB, Dharampur while functioning as such and performing the duties of I/Man in Tapri Circle on 24.4.94 at about 2030 hrs. committed misconduct/neglect of duty, remissness in the discharge of duties in his capacity as a member of the force U/s 11(1) of CRPF Act, 1949 in that he accompanied Constable Thakur Bhagat of Police Check Post, Tapri and misbehaved with Shri Surinder Kumar, Dalip Kumar and Smt. Sarita and molesting with Smt.Sarita Devi and abetting the same action by other culprits.

Article-IV:

That the above Constable Bishan Singh No. 8564509 of 'F' Coy of Group Centre, SSB, Dharampur, while functioning as such and performing the duties of I/Man in Tapri Circle on 24.4.94 committed misconduct/neglect of duty, remissness in the discharge of duties in his capacity as a member of the force U/S 11(1) of CRPF Act, 1949 in that he conducting himself unbecoming of an SSB official and bringing a bad name to the Organisation."

Shri Man Mohan Singh, Assistant Commandant of Group Centre, SSB, Dharampur, was appointed as Enquiry Officer to enquire into the charges. Inspite of various opportunities having been afforded to the petitioner, he chose not to cooperate and remain ex parte and based on the material on record, statements

of the witnesses recorded during the course of enquiry, Enquiry Officer held that the charges framed against the petitioner stands proved. Memorandum dated 22.5.2001 alongwith the enquiry report dated 24.11.2000 was supplied to the petitioner affording him adequate opportunity to represent and also to offer his views and comments with regard to the proposed penalty to be imposed. The petitioner (hereinafter after referred to as delinquent official) is stated to have responded to the same vide undated letter of June, 2001. However, vide orders dated 24.9.2001 the Disciplinary Authority decided that while going through the disciplinary proceedings on judicious circumstances, it was of the firm opinion that the acts of the delinquent official is in violation of the discipline of the organization and called for an exemplary punishment. He was considered to be unfit person to be retained in government service and was ordered to be dismissed from service with effect from 16.11.1999 that is the date on which he was earlier dismissed in view of conviction in criminal matter. No appeal is stated to have been filed against this order and the delinquent official has directly filed the instant petition assailing the disciplinary proceedings as also the decision in respect thereto by way of present writ petition.

Notice was issued in the present petition and the respondents have filed their reply.

Ms. Ranjana Parmar, learned counsel appearing for the petitioner has assailed the order on the following reasons:-

In relation to the same incident an FIR No. 23 dated 25.4.1994 was lodged against the delinquent official under Sections 366, 368, 506 read with Section 120-B of the Indian Penal Code. During trial petitioner was charged, convicted and sentenced for imprisonment under Sections 366 and 506, IPC vide judgment dated 28.10.1999. In an appeal, this Court set aside the said judgment qua the delinquent official on the ground that the statement of the witnesses PW-1 and PW-3, namely, Sarita Devi and Dalip Kumar could not be relied upon. The same being Criminal Appeal Nos. 452/1999, 484/1999 and 531/1999, decided on 10.10.2000 (**Harish Kumar and others vs. State of H.P.**, reported in 2001(1) Shim.L.C. 281).

She contends that the departmental enquiry as also the order of dismissal needs to be set aside, more particularly, in view of decision rendered by the Apex Court in **G.M.Tank** vs. **State of Gujarat and others**, reported in (2006) 5 SCC 446. She has further contended that the charges, evidence, witnesses and circumstances in the departmental proceedings are identical to that of criminal case.

They being on the same set of facts, in view of the acquittal by the criminal Court, the proceedings ought to have been dropped. She has also stated that since the statements of the witnesses in the criminal trial have not been given credence to by the High Court and as such their statements ought not to have been relied upon for the purpose of holding the delinquent official guilty of misconduct in departmental proceedings. She has relied upon the observations made by this Court in **Harish Kumar's** case (supra), vide which the delinquent official was acquitted, to contend that since there is honourable acquittal by this Court, the departmental proceedings ought to be dropped in view of ratio laid down by the Apex Court in **G.M.Tank's** case (supra). The judgment of the High Court has binding and authoritative value and ought to have been given credence to. She has further contended that the findings in the enquiry report are contrary to the record and as such are perverse and, moreover, the charge of absence from duty in any case has not been proved.

Mr.Thakur, learned counsel appearing for the respondents has relied upon **State of Rajasthan** v. **B.K.Meena and others**, reported in (1996) 6 SCC 417, to contend that the approach and the objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The standard

of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. He has further relied upon a decision of the Apex Court in **Lalit Popli vs. Canara Bank and others**, reported in (2003) 3 SCC 583, to contend that in case of disciplinary enquiry the technical rules of enquiry have no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

The contentions are dealt as under:-

It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. (**State of A.P. vs. S.Sree Rama Rao**, reported in AIR 1963 SC 1723).

It is also settled law that this Court would not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring

authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

The Apex Court in **Noida Entrepreneurs Assn. vs. Noida, (**writ petition (civil) 150 of 1997 with W.P. (C) No. 529 of 1998**),** has recently held as under:-

> "The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiently of public service. …..… Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings

> relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position."

This has been the constant position as is evident from the decisions in **Ajit Kumar Nag.** Vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others, reported in (2005) 7 SCC 764 and **Depot Manager, A.P. State Road Transport Corporation** vs. **Mohd. Yousuf Miya and others**, (1997) 2 SCC 699.

In **Chairman and Managing Director, United Commercial Bank and others** vs. **P.C.Kakkar,** reported in (2003) 4 SCC 364, it has been held as under:-

> "12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

> "15. ….. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law…."

On the issue of punishment being disproportionate to the offence alleged to have been committed by the petitioner, the ratio of law laid down of the apex Court in **State of UP vs. Sheo Shanker Lal Srivastava and others**, reported in (2006) 3 SCC 276, is reproduced hereinbelow:-

> "22. It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

It is not in dispute that the Enquiry Officer initiated the proceedings after giving due notice and opportunity to the petitioner. It is also not in dispute that inspite of various opportunities having been afforded at various stages of the enquiry, the petitioner chose not to participate and

remain absent therefrom. The Enquiry Officer inspite of having repeatedly informed the delinquent official about the various proceedings was left with no option but to conduct the proceedings ex parte against the petitioner. It is also not in dispute that the statement of the witnesses were also supplied to the petitioner. There has been total non-cooperation on the part of the petitioner. The Enquiry Officer was to enquire in relation to the incident which had taken place on 24.4.1994 at Tapri Circle, where the delinquent official was posted. The Enquiry Officer has examined three witnesses, namely, PW-2 Surinder Kumar, PW-3 Sarita Devi alias Saraswati Devi. PW-5 Shri Laiq Ram, the Enquiry Officer, has also taken on record documents i.e. copy of FIR, statement of the petitioner given before the police on 28.4.1994 and statement of attendance of the petitioner having been posted in CO Office, Tapri. Since the petitioner chose not to participate in the proceedings and voluntarily absented himself from the same, no statement of defence was placed nor considered. The Enquiry Officer in its detailed report has examined the entire material on record. From the statement of PW-5 Shri Laiq Ram, being the Officiating Officer as Circle Organizer in CO Office, Tapri, permitted the delinquent official at 1730 hrs. on 24.4.1994 to have dinner at his residence, which was located in the

nearby vicinity. The delinquent official was to be on night duty with effect from 2000 hrs on 24.4.2004 upto 0800 hrs. on 25.4.2004. As per his statement when he checked at 2200 hrs, the delinquent official was present in the office. However, he was not sure as to whether the delinquent official was on duty with effect from 1730 hrs. to 2200 hrs. on the same day. The Enquiry Officer has also relied upon the statement of delinquent official given to the police wherein he himself has stated that on 24.4.1994 at 1745 hrs. in Tapri, he came to know that Shri Lachi Ram, Shri Ram Kedar and Shri Atma Ram are taking two men and one woman, who have come first time in the area, towards Wangtu by cheating. He had come to the market to buy vegetables when he met Constable Thakur Bhagat of H.P. Police, both of them followed the aforesaid persons towards Wangtu and caught them after 2.5 to 3 Kms. They tried to bring these two men and woman to Tapri. The Enquiry officer concluded that the delinquent official has deserted CO Office and went approximately 3 Kms. to Tapri, for which he was not permitted as he was permitted just to go home to have his dinner. He further concluded that an effort to bring two men and woman back to Tapri without any permission from the competent authority is an illegal act on the part of the delinquent official.

The Enquiry Officer further relied upon the statement of PW-2 Surinder Kumar and held that the delinquent official in association with Constable Thakur Bhagat of H.P. Police Check Post at Tapri, asked three tourists for pass-ports/ Inner Line permit, which did not fall within the sphere of his duty. Further, statement of PW-3 Sarita Devi and also PW-2 Surinder Kumar has been relied upon to show that Constable Bishan Singh had ordered her to show her pass-port and had counted money from her pocket and checked her Mangal Sutra, abused her and beat her by hand. The Enquiry Officer concluded that Constable Bishan Singh in association with Thakur Bhagat forced them to turn back to Tapri and on their resistance not only misbehaved with Surinder Kumar and Dalip Kumar but also molested Smt. Sarita Devi. He further concluded that the delinquent official is not working in law enforcing agency and is not permitted to check the Inner Line permit or pass-port on any individual nor does it come with in his Charter of duties. All the aforesaid conducts on the part of Constable Bishan Singh are unbecoming of an SSB official and has brought a bad name to the Organisation. The Enquiry Officer has held that the charges are proved against the delinquent official. I see no reason to differ with the said enquiry report.

I am in disagreement with Ms. Parmar, learned counsel for the petitioner that the findings recorded by this Court while acquitting the delinquent official can be made basis for dropping the departmental enquiry and proceedings against the delinquent official. In the present case, unlike **G.M.Tank's** case (supra), the charges framed are distinct and separate. What is required to be seen is the fact that in criminal case the delinquent official was charged for an offence under Sections 366, 506 IPC alone. It has been rightly contended by Mr. Thakur that Section 366 IPC deals with kidnapping, abducting or inducing woman to compel her for marriage etc. In the departmental proceedings the charge is not with regard to criminal intimidation, abduction or kidnapping. Article of Charges reproduced hereinabove would show that the petitioner has been charged for having absented/ deserted his place of posting without prior permission/information of the competent authority and indulging in criminal activity in association with Constable Thakur Bhagat; the delinquent official used his official position to ask three tourists, namely, Shri Surinder Kumar, Smt. Sarita Devi and Dalip Kumar, who were travelling from Uttar Kashi to Sangla, District Kinnaur, for Inner line permits which did not fall within the scope of his duties.

The delinquent official has been found guilty of not only misbehaving with the aforesaid three tourists but molesting Smt. Sarita Devi; the conduct of the petitioner is unbecoming of an SSB official bringing bad name to the Organisation. All the aforesaid acts of the delinquent official amount to misconduct with neglect of duty, remissness in the discharge of duties in his capacity as a member of the force under Section 11(1) of CRPF Act, 1949.

Undoubtedly, the delinquent official has been acquitted in the criminal matter. However, disciplinary proceedings initiated against the delinquent official being separate and distinct, the material relied upon is also not the same and identical. It is true that PW-2 Shri Surinder Kumar and PW-3 Smt. Sarita Devi were witnesses in the Criminal trial. However, it is not that their statements recorded before the trial Court have been placed as such before the Enquiry Officer. These witnesses have appeared and deposed afresh before the Enquiry Officer. In addition to the aforesaid two witnesses, there is yet another witness PW-5 Sh. Laiq Ram, Officiating as Circle Organiser in CO Office, Tapri, at the relevant point of time. As has already been noticed, the statement of this witness only goes to show that even though delinquent official had sought his permission at 1730 hours to have dinner at

his house, in close proximity of place of posting of duty, however, he was not sure as to whether delinquent official was on duty at the time of incident. It is to be noted that the alleged incident has taken placed on or about 1745/1800 hours, when the petitioner was admittedly to be on night duty starting from 1800 hours on 24.4.1994 upto 0800 hours on 25.4.1994.

The ratio of law laid down in **G.M.Tank's** case (supra) is in the peculiar facts of that case. The Apex Court in **Uttranchal Road Transport Corpn. and ors.** Vs. **Mansaram Nainwal**, reported in AIR 2006 SC 2840, held:-

> "13. …..Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well settled theory of precedents, every decision contains three basic postulates – (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law

applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See *State of Orissa vs. Sudhansu Sekhar Misra and ors, (AIR 1968 SC 647) and Union of India and ors. Vs. Dhanwanti Devi and Ors. (1996(6) SCC 44).* A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn vs. Leathem, (1901) AC 495 (HL), Earl of Halsbury LC* observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."

This Court in **D.K.Agnihotri** vs. **The State Bank of India**, reported in 2007(1) Shim.L C 70, also considered **G.M.Tank's** case (supra) and held the same to be applicable in the facts and circumstances of

that case itself and, therefore, the same cannot be a binding precedent.

As far as acquittal of the appellant by a criminal court is concerned, in my opinion, the said order does not preclude the respondent from taking disciplinary action if it is otherwise permissible. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is

able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the delinquent official by the High Court, therefore, does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the respondent.

In the departmental proceedings, the question is whether the delinquent official is guilty of such conduct as would necessitate his removal from service or lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him.

PW-5 Laiq Ram has clearly stated that the duty of the delinquent official was to commence from 2000 hrs on 24.4.1994 to 0800 hrs. on 25.4.1994. Permission to take food at his residence, in vicinity of the place of duty, was given at 1730 hrs. Therefore, it will be incorrect to contend that the delinquent official had due permission to be absented from the place of his duty. The enquiry officer has held that the delinquent official was not authorised

to indulge into any illegal activity, the Enquiry Officer has given a detailed report based on material, cogent and reliable evidence; it is a well reasoned report. Therefore, I see no reason to interfere with the Enquiry report as also the decision taken by the Disciplinary Authority to dismiss the petitioner from service as his conduct is found to be unbecoming of an SSB official or government official.

No other point was urged by the learned counsel for the parties.

For the foregoing reasons, the writ petition is dismissed. However, there shall be no order as to costs.

**21st March, 2007** **(Sanjay Karol), J.**
**(C)**